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No. 03-950

Supreme Court, U.S.
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In The

Supreme Court of the United States

BANKRUPTCY RECEIVABLES MANAGEMENT,

Petitioner,

v.

CHARLES and JULIE LOPEZ,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

Respondent does not find any misstatement of facts in the Petitioner's Statement of the Case that would affect an analysis of the question presented to this Court. Respondent provides the following supplemental facts:

Debtors were not represented by an attorney at the time they signed the Post Discharge Property Retention Agreement (PDPRA). A representative of Bankruptcy Receivable Management (BRM) contacted Mr. Lopez and told him he "had to sign" the PDPRA. The representative of BRM did not discuss any other options, did not explain that he had the right to return the jewelry, did not explain the terms of the second post discharge agreement, and did not suggest that the debtors seek legal advice.

After signing the PDPRA, the debtors realized they could not afford the payments and offered to return the property to BRM, but BRM insisted that the debtors make payments according to the PDPRA. When the debtors were unable to make the payments under the terms of the PDPRA, BRM threatened to sue the debtors.

REASON TO DENY THE PETITION

The Petition for Writ of Certiorari does not focus on the core issue of this case and that is the legality of the PDPRA. "The validity of the contract is the central claim of both parties." *Bankruptcy Receivables Management v. Lopez* (*In re Lopez* 345 F.3d 70) (9th Cir. 2003) at 706. The PDPRA was essentially a reaffirmation agreement, without the protection afforded a consumer in 11 USC § 524(c) and (d). The so called "fourth option" that was outlined in

, 139
McClelland Fed. Credit Union v. Parker (*In re Parke*; the
F.3d 668 (9th Cir. 1998), was only one of the reaso
Ninth Circuit found the PDPRA was invalid.

l the
Respondent believes that the Petitioner misstated in
Ninth Circuit's position in *In Re Lopez* when they sta y on
their petition that the Ninth Circuit focused *exclusi* Peti-
the debtors' and BRM's rights under *In Re Parker*
tioner's Writ, page 10).

The Court also found:

> "The Lopezes were entitled to the protections
> § 524(c) of the Bankruptcy Code because the ne
> agreement was based "in part" on the discharge
> debt."
>
> *In Re Lopez* at 70

The Court went on to say:

> "BRM's attempt to reaffirm the debt does n
> comport with § 524(c) of the Bankruptcy Cod
> The agreement was entered after the discharg
> of the debt, contrary to § 524(c)(1), and was n
> filed with the court and reviewed by Lopeze
> counsel, contrary to § 524(c)(3). This agreemer
> cannot be a valid reaffirmation agreement."
>
> *In Re Lopez* at 70

one
If the only question before this Court is th this
presented in the Petitioner's Writ, then the decision the
Court, no matter which way it decides, will not affe
outcome of this case.

w, I
As an attorney who only practices Bankruptcy is is
would welcome the *Parker* decision to be upheld;

simply not the right case to bring the *Parker* issues before this Court.

In addressing Petitioner's argument concerning the *Parker* issue, this Court already declined to review *In Re Parker* when they denied certiorari in that case. Nothing has changed since then.

In Re Parker is well reasoned and a thorough analysis of the issues raised in 11 USC § 521(2) and why it is not and should not be binding on the debtor. The case eloquently speaks for itself on these issues.

Petitioner ignores the fact that it, and all creditors, retain its State Law rights when it comes to preservation of collateral. Because a bankruptcy does not terminate a creditor's security in the collateral, the debtors still cannot waste the collateral and must return it if they cannot or will not pay for it. A creditor is, therefore, not harmed by the decision *In Re Parker*.

Reaffirmation and retention agreements should be incentives for the debtor to continue a formal relationship with the creditor and should not be used as a hammer to drive the debtor into submission.

This case is a perfect example of why the Bankruptcy Code requires Court overview of Reaffirmation Agreements. 11 USC § 524(c).

If, after the bankruptcy, where the debtor has neither reaffirmed nor redeemed the collateral and is in breach of contract, the creditor needs to make the decision: do they want the collateral or do they want the money? If it is money they want, then they need to work with the debtor. If they don't have faith in the debtor, then they need to

repossess the collateral and be done with their dealing with the debtor.

There is nothing in the Bankruptcy Code that prevents the debtor and the creditor from reaching a mutual agreement to redeem the collateral after the bankruptcy.

CONCLUSION

For the above-mentioned reasons, BRM's Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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